

UNITED STATES DISTRICT COURTS  
WESTERN DISTRICT OF TEXAS  
NORTHERN DISTRICT OF TEXAS  
CENTRAL DISTRICT OF CALIFORNIA  
DISTRICT OF ARIZONA  
NORTHERN DISTRICT OF ILLINOIS  
MIDDLE DISTRICT OF FLORIDA  
DISTRICT OF SOUTH CAROLINA  
DISTRICT OF MASSACHUSETTS  
EASTERN DISTRICT OF PENNSYLVANIA  
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA	)	
	)	
v.	)	CASE NO. (W.D. TX)
	)	
TANKNOLOGY - NDE	)	CASE NO. (N.D. TX)
INTERNATIONAL, INC.	)	
	)	CASE NO. (C.D. CA)
Defendant.	)	
	)	CASE NO. (N.D. IL)
	)	
	)	CASE NO. (D. AZ)
	)	
	)	CASE NO. (M.D. FL)
	)	
	)	CASE NO. (D. SC)
	)	
	)	CASE NO. (E.D. PA)
	)	
	)	CASE NO. (D. MA)
	)	
_____	)	CASE NO. (D. NJ)

**PLEA AGREEMENT AND STIPULATION**

The United States Attorney's Offices for the Western District of Texas, the Northern District of Texas, the Central District of California, the District of Arizona, the Northern District of Illinois, the Middle

District of Florida, the District of South Carolina, the District of Massachusetts, the Eastern District of Pennsylvania, the District of New Jersey and the Environmental Crimes Section of the United States Department of Justice (collectively the “United States” or the “Government”) enter into the following plea agreement with TANKNOLOGY-NDE INTERNATIONAL, INC. (“Defendant” or “TANKNOLOGY”), pursuant to Rule 11(e)(1)(B) of the Federal Rules of Criminal Procedure. Where applicable in this plea agreement, the United States and TANKNOLOGY shall be referred to collectively as “the Parties.”

I. Guilty Pleas

A. On such date as the Court may determine, TANKNOLOGY shall plead guilty in the Western District of Texas to the counts in Informations to be filed against TANKNOLOGY in the following districts, and make a factual admission of guilt to the Court as set forth in the accompanying Factual Basis. In accordance with Federal Rule of Criminal Procedure 20, the United States and the Defendant agree that the pleas and sentence to be imposed upon the Defendant shall take place in the Western District of Texas.

B. The Defendant agrees to waive indictment in all of the following Districts and plead guilty to Informations charging the following.

Western District of Texas: Count 1, Knowingly submitting a false claim to an agency of the United States, in violation of 18 U.S.C. § 287.

Northern District of Texas: Count 1, Knowingly submitting a false claim to an agency of the United States, in violation of 18 U.S.C. § 287.

Central District of California: Count 1, Knowingly and willfully making a false statement in a matter

within the jurisdiction of an agency of the United States, in violation of 18 U.S.C. § 1001.

District of Arizona: Count 1, Knowingly and wilfully making a false statement in a matter within the jurisdiction of an agency of the United States, in violation of 18 U.S.C. § 1001.

Northern District of Illinois: Count 1, Knowingly submitting a false claim to an agency of the United States, in violation of 18 U.S.C. § 287.

Middle District of Florida: Count 1, Knowingly submitting a false claim to an agency of the United States, in violation of 18 U.S.C. § 287.

District of South Carolina: Count 1, Knowingly submitting a false claim to an agency of the United States, in violation of 18 U.S.C. § 287.

District of Massachusetts: Count 1, Knowingly submitting a false claim to an agency of the United States, in violation of 18 U.S.C. § 287.

Eastern District of Pennsylvania: Count 1, Knowingly and wilfully making a false statement in a matter within the jurisdiction of an agency of the United States, in violation of 18 U.S.C. § 1001.

District of New Jersey: Count 1, Knowingly and wilfully making a false statement in a matter within the jurisdiction of an agency of the United States, in violation of 18 U.S.C. § 1001.

## II. Sentencing Guidelines and Penalties

The Parties agree and understand that the United States Sentencing Guidelines relating to the sentencing of organizations (Chapter Eight) apply in this case. The Parties agree that the statutory maximum amount of the fines to be imposed under the statutes charged is \$500,000.00 per count, 18 U.S.C. § 3571(c)(3), or not more than the greater of twice the gross gain derived from the crimes or twice the gross loss caused to the victims of the crime, 18 U.S.C. § 3571(d), and that the sentence may include a term of probation of at least one year but not more than five years. TANKNOLOGY understands that each Court may order restitution to the victims of the crimes, in accordance with 18 U.S.C. § 3572.

TANKNOLOGY also understands that it must pay a \$400.00 mandatory special assessment for each count of conviction, due in full on the date of sentencing.

18 U.S.C. § 3013(a)(2)(B).

### III. Corporate Authorization

TANKNOLOGY will provide to the United States written evidence in the form of a notarized resolution of the Board of Directors of TANKNOLOGY with both notary and corporate seals, certifying that Defendant is authorized to plead guilty to the felony charges as set forth in the Informations, and to enter into and comply with all provisions of this Plea Agreement. The resolution shall further certify that the Chairman of the Board of TANKNOLOGY and his designees are authorized to take these actions and that all corporate formalities, including, but not limited to, approval by Defendant's directors, required for such authorization have been observed. The Defendant and the United States agree, pursuant to Federal Rule of Criminal Procedure 20, that the Chairman of the Board of TANKNOLOGY shall appear on behalf of Defendant to enter all of the guilty pleas on behalf of the Defendant in the Western District of Texas.

### IV. Sentence Recommendation

A. In accordance with Federal Rule of Criminal Procedure 11(e)(1)(B), the United States and TANKNOLOGY jointly recommend the following sentences to the Court in this case. For the purposes of the specific counts in the Informations at issue in this Plea Agreement and for the purposes of this agreement only, the United States and the Defendant agree that an aggregate criminal fine of one million

dollars (\$1,000,000) is appropriate and may be imposed pursuant to 18 U.S.C. Section 3571(d).

B. The Parties jointly recommend and the Defendant agrees to pay restitution to the United States in the amount of one million two hundred ninety thousand dollars (\$1,290,000). In accordance with U.S.S.G. § 1B1.3 , the Defendant and the United States agree that the restitution due to the United States covers the period January 1997 through on or about December 13, 1999. The Defendant and the United States understand and acknowledge that a failure by the Court or the U.S. Probation Office to agree with the recommendation of the Defendant and the United States as set forth above is not a basis for to the Defendant to withdraw the pleas of guilty or to void the Plea Agreement.

C. The Parties jointly recommend and the Defendant agrees to pay the criminal fine and restitution in accordance with the payment schedule set forth in Attachment A to this Plea Agreement. Defendant specifically agrees to pay \$250,000 to the United States upon the date of sentencing.

D. The Parties jointly recommend and the Defendant agrees that the full criminal fine amount and full restitution amount shall become due and payable should defendant fail to make any scheduled payment as required in Attachment A, pursuant to 18 U.S.C. § 3572.

E. The Parties jointly recommend and the Defendant agrees to a period of probation of five years, which shall include as conditions of probation payment of the criminal fine and restitution, and implementation of a Quality Management System (QMS) as described in paragraph V below.

F. The Defendant reserves the right to allocute.

G. The United States reserves the right to allocute.

V. Quality Management System

The Defendant agrees to implement a comprehensive Quality Management System ("QMS"). The required schedule and procedures of the QMS are set forth in Attachment B to this Plea Agreement.

VI. Public Apology

TANKNOLOGY agrees that not more than ten business days after it has entered a guilty plea in the Western District of Texas, TANKNOLOGY will pay for and cause to be published an advertisement, for two weekdays in the Austin American Statesman. The published apology shall be written verbatim and in the font from the language agreed upon between TANKNOLOGY and the United States, as set forth in Attachment C to this Plea Agreement.

VII. Cooperation by the Defendant

A. Defendant will cooperate with the United States in its continuing investigation of possible violations of federal law by any of the Defendant's officers, board members, executives, employees, contractors, or agents as specified below. Defendant agrees to do the following not later than ***ten*** (10) days after this Plea Agreement is filed by the United States with the District Court in the Western District of Texas.

1. Defendant will take all reasonable steps to make its employees available to the United States to participate in judicial proceedings, and TANKNOLOGY will make all reasonable efforts to ensure that its officers, employees, consultants, vendors and experts cooperate with the investigation and truthfully disclose all information about their activities and those of others relating to the subject matter. TANKNOLOGY will advise its employees that: (a) they are encouraged to cooperate; cooperation can include providing information to the Government, being interviewed by Government agents or attorneys, and testifying in official proceedings; (b) TANKNOLOGY will grant liberal leave if necessary to facilitate their cooperation with the Government; and (c) no employees will be fired, demoted, reassigned or otherwise suffer a reduction in pay or other benefits because of their cooperation with the United States with respect to the alleged criminal violations

under investigation.

2. Defendant will make all documents, records and other technical information available to Government investigators which have been subpoenaed by the United States in this matter or any related criminal matter. Defendant agrees to the waiver of privilege necessary to produce these documents, with the following exceptions: no implicit waiver of privilege is intended in this paragraph of the mental impressions of counsel or documents withheld pursuant to any joint defense agreement. Defendant will redact information which reveals the mental impressions of counsel or information withheld pursuant to any joint defense agreement.
3. Defendant agrees to provide to the United States reports of interviews by counsel for Defendant and summaries, digests or chronologies thereof containing factual information regarding the testing of underground storage tanks by TANKNOLOGY employees, more specifically, (a) VacuTect tests; (b) Sure Test tests; (c) UST line tests; (d) UST leak detector tests; (d) Stage II Vapor Recovery tests; (e) bonus and incentive programs for TANKNOLOGY employees and management personnel; and (f) quality control and quality assurance practices and policies for all UST System testing. In order to protect the privileged communications with its employees, the memoranda shall be redacted so as not to identify persons who provided such information or to disclose mental impressions of attorneys.
4. Defendant agrees to provide full access to Defendant's consultants and copies of all factual records and reports produced by same, or factual portions thereof, including those prepared for or at the direction of counsel. Access does not include paying the fees or expenses of any such consultant. The Government will restrict any of its questioning, interviews or testimony of these individuals to factual information and documents. The Government is not seeking and the Defendant is not agreeing to disclose mental impressions of counsel.
5. Defendant agrees to provide an updated and consolidated privilege log for all documents that remain withheld under a claim of privilege during grand jury investigations in the Western District of Texas, Northern District of Texas, Eastern District of California, Central District of California, District of Arizona, Northern District of Illinois, District of Georgia, Middle District of Florida, District of Massachusetts and District of New Jersey. As part of the consolidated privilege log, or in a separate document, TANKNOLOGY will identify and enumerate all documents being withheld in part, or in their entirety, under a claim of the joint defense privilege and provide a general description of each document without disclosure of the identity of the members of any joint defense privilege.
6. The Government is not seeking and the Defendant will not be producing information or

documents under this agreement that are protected from disclosure by any joint defense agreement unless all parties to the joint defense agreement consent. Defendant, and all counsels and consultants for the Defendant, shall withdraw from all joint defense agreements regarding the subject matter of this agreement no later than ten (10) after this Plea Agreement is filed by the United States with the District Court in the Western District of Texas, and shall immediately thereafter sever all such contractual agreements. Defendant, and all counsels and consultants for the Defendant, agree not to enter any joint defense agreements regarding the subject matter of this agreement after the signing of this agreement; provided however, that nothing herein shall prohibit Defendant from paying the fees and expenses of counsel for TANKNOLOGY individual employees, as required by Tanknology's By-Laws and Delaware corporate statutes.

7. During the period of probation, and at all reasonable times and with reasonable prior notice by the government as practicable, TANKNOLOGY shall provide full access to TANKNOLOGY owned or operated vehicles, records, and employees including access to, production and authentication of, all records described herein;
8. Defendant TANKNOLOGY and all TANKNOLOGY counsel agree that the United States may make any direct or indirect use, including release to third parties, of any information and documents provided under this Plea Agreement.
9. The parties understand and agree that the United States may request additional documents from TANKNOLOGY as authorized by law.
10. At the time of sentencing, the United States will advise the Court of the extent of TANKNOLOGY's cooperation and compliance with the terms of this plea agreement. Furthermore, the United States will advise any third parties of the nature and extent of TANKNOLOGY's cooperation upon TANKNOLOGY's request.

#### VIII. Retention of Records

TANKNOLOGY agrees that no later than sixty (60) days from the date of sentencing, it shall retrieve from the United States all documents and materials that were seized by the United States from TANKNOLOGY corporate headquarters and regional offices during execution of search warrants at those offices. TANKNOLOGY shall also retrieve all those documents and materials which were returned to the United States pursuant to grand jury subpoena. Thereafter, TANKNOLOGY shall maintain the documents

and materials during the entire period of probation, and shall provide reasonable access to the Government for review and use of any documents and materials.

IX. Organizational Changes

Defendant TANKNOLOGY shall not, through a change of name, business reorganization, merger, sale or purchase of assets, lease or transfer of assets, or divestiture of assets to any related entity, creation of any commercial entity, or any similar or equivalent action, including but not limited to seeking protection in bankruptcy, seek to avoid the obligations and conditions in the Plea Agreement, including the required Quality Management System. This Plea Agreement, together with all of the obligations and terms hereof, shall inure to the benefit of and bind assignees, successors-in-interest, or transferees of the Defendant.

X. Additional Liability

Provided that the Defendant complies with the terms of this Plea Agreement, the United States agrees to forgo additional criminal prosecution against the Defendant for the charges set forth in the Informations, and for other violations within the scope of the investigation upon which the Informations are based that took place prior to the date of this Plea Agreement and are known to the United States at the time of the signing of this Plea Agreement. The parties understand that this Plea Agreement does not apply to any individuals, including but not limited to present and former employees, officers, executives, board members, agents, attorneys, or contractors. The parties further understand that this Plea Agreement only applies to federal criminal charges. This Plea Agreement does not provide or promise any waiver of any civil or administrative actions, sanctions, or penalties that may apply, including but not limited to: fines,

penalties, claims for damages of natural resources, suspension, debarment, listing, licensing, injunctive relief, or remedial action to comply with any applicable regulatory requirement.

XI. Express Waiver of Right to Appeal Guilty Plea and Sentence

Pursuant to this Plea Agreement, the Defendant agrees to enter unconditional pleas of guilty to the aforementioned counts of the Informations. Additionally, the Defendant is aware that 18 U.S.C. § 3742 would normally afford the Defendant the right to appeal the sentence imposed in these cases. In exchange for the United States' considerations afforded in this Plea Agreement, the Defendant hereby waives the right to appeal its guilty pleas and any sentence imposed on any grounds, other than ineffective assistance of counsel, prosecutorial misconduct of a constitutional nature, an upward departure above the Sentencing Guidelines, or a criminal fine in excess of that recommended by the Parties to this Plea Agreement. The Defendant further understands that nothing in this Plea Agreement shall affect the Government's right and/or duty to appeal as set forth in 18 U.S.C. Section 3742(b). However, in the event that the United States appeals the Defendant's sentence pursuant to Section 3742(b), the Defendant shall be released from the above waiver of appellate rights solely with respect to sentencing.

XII. Binding Final Agreement

None of the terms of this Plea Agreement shall be binding on the United States until this Plea Agreement is signed by the Defendant and defense counsel and until signed by the United States Attorneys for the Western District of Texas, the Northern District of Texas, the Central District of California, the District of Arizona, the Northern District of Illinois, the Middle District of Florida, the Eastern District of

Pennsylvania, the District of Massachusetts, the District of New Jersey and by the Assistant Attorney General of the Environment and Natural Resources Division, or their designees.

This Plea Agreement is the only agreement between the United States and Defendant concerning this Plea Agreement, supersedes all prior understandings, if any, whether written or oral, and cannot be modified other than in a writing that is signed by all parties. No other promises or inducements have been or will be made to the Defendant in connection with this case, nor have any predictions or threats been made in connection with this plea.

AGREED TO AND  
RESPECTFULLY SUBMITTED,

THOMAS L. SANSONETTI  
ASSISTANT ATTORNEY GENERAL  
ENVIRONMENT & NATURAL  
RESOURCES DIVISION  
U.S. DEPARTMENT OF JUSTICE

Date: \_\_\_\_\_

BY:

\_\_\_\_\_  
JENNIFER WHITFIELD  
TRIAL ATTORNEY  
ENVIRONMENTAL CRIMES SECTION

Date: \_\_\_\_\_

BY:

\_\_\_\_\_  
DANIEL W. DOOHER

SENIOR TRIAL ATTORNEY  
ENVIRONMENTAL CRIMES SECTION

JOHNNY SUTTON  
UNITED STATES ATTORNEY  
WESTERN DISTRICT OF TEXAS

Date: \_\_\_\_\_

BY:

\_\_\_\_\_  
SHARON PIERCE  
ASSISTANT U.S. ATTORNEY

JANE J. BOYLE  
UNITED STATES ATTORNEY  
NORTHERN DISTRICT OF TEXAS

Date: \_\_\_\_\_

BY:

\_\_\_\_\_  
JOSEPH M. REVESZ  
ASSISTANT U.S. ATTORNEY

DEBRA W. YANG  
UNITED STATES ATTORNEY  
CENTRAL DISTRICT OF CALIFORNIA

Date: \_\_\_\_\_

BY:

\_\_\_\_\_  
JOSEPH JOHNS  
ASSISTANT U. S. ATTORNEY

PAUL K. CHARLTON  
UNITED STATES ATTORNEY  
DISTRICT OF ARIZONA

Date: \_\_\_\_\_

BY:

\_\_\_\_\_  
PAUL ROOD  
ASSISTANT U. S. ATTORNEY

PAUL J. FITZGERALD  
UNITED STATES ATTORNEY  
NORTHERN DISTRICT OF ILLINOIS

Date: \_\_\_\_\_

BY:

\_\_\_\_\_  
BRIAN HAVEY  
ASSISTANT U. S. ATTORNEY

PAUL I. PEREZ  
UNITED STATES ATTORNEY  
MIDDLE DISTRICT OF FLORIDA

Date: \_\_\_\_\_

BY:

\_\_\_\_\_  
JOHN GIBBS  
ASSISTANT U.S. ATTORNEY

J. STROM THURMOND, JR.  
UNITED STATES ATTORNEY  
DISTRICT OF SOUTH CAROLINA

Date: \_\_\_\_\_

BY:

\_\_\_\_\_  
ASSISTANT U.S. ATTORNEY

MICHAEL J. SULLIVAN  
UNITED STATES ATTORNEY  
DISTRICT OF MASSACHUSETTS

Date: \_\_\_\_\_

BY:

\_\_\_\_\_  
KAREN GOODWIN  
ASSISTANT U.S. ATTORNEY

PATRICK L. MEEHAN  
UNITED STATES ATTORNEY  
EASTERN DISTRICT OF PENNSYLVANIA

Date: \_\_\_\_\_

BY:

\_\_\_\_\_  
AMY L. KURLAND

CHRISTOPHER J. CHRISTIE  
UNITED STATES ATTORNEY  
DISTRICT OF NEW JERSEY

Date: \_\_\_\_\_

BY:

\_\_\_\_\_  
NICHOLAS S. ACKER  
ASSISTANT U.S. ATTORNEY

I have read the foregoing plea agreement and my attorneys have explained it to me and it contains everything my attorneys have explained to me about the plea TANKNOLOGY wishes to enter. I have read the plea agreement and understand the terms of the agreement. I further state that there are no other prior agreements and no additional agreements, representations or promises, either oral or in writing between TANKNOLOGY or its attorney, and the United States, its agents, representatives, employees and attorneys.

TANKNOLOGY-NDE INTERNATIONAL, INC.

Date: \_\_\_\_\_

BY:

\_\_\_\_\_  
JAY ALLEN CHAFFEE , in his corporate capacity  
as Chairman of the Board of TANKNOLOGY-NDE  
INTERNATIONAL, INC.

Date: \_\_\_\_\_

\_\_\_\_\_  
ROBERT T. STEWART, ESQ.  
COUNSEL FOR TANKNOLOGY-NDE  
INTERNATIONAL, INC.

Date: \_\_\_\_\_

\_\_\_\_\_  
EDWIN J. TOMKO, ESQ.  
COUNSEL FOR TANKNOLOGY-NDE  
INTERNATIONAL, INC.